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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 112

THE FEDERAL LAND BANK OF COLUMBIA,
PETITIONER,

vs.

MRS. WILL GAINES, Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

BRIEF ON BEHALF OF RESPONDENT

I. STATEMENT

The facts in this case are not in dispute and the parties are in accord that the determination of the controversy is dependent upon a construction of the Federal Farm Loan Act (U. S. Code, Title 12, Chap. 7, Sec. 641, et. seq.).

The facts raise clearly the question whether or not the respondent is liable for the payment of the funds which

the Federal Land Bank of Columbia had transmitted to the Columbus National Farm Loan Association to be loaned to respondent. The funds were deposited in the Polk County Bank & Trust Company, the duly designated depository of said association, to the credit of said association, and by reason of the insolvency of the said depository, were not paid over to respondent.

In this argument the contentions of the respondent will be set out under the following general heads:

1. Delivery of the funds by appellant to the Columbus National Farm Loan Association was not a delivery of the funds to respondent.

2. The Columbus National Farm Loan Association was not the agent of respondent for the purpose of receiving the funds in question, but was acting as a "public agent."

II. DELIVERY OF THE FUNDS BY APPELLANT TO THE COLUMBUS NATIONAL FARM LOAN ASSOCIATION WAS NOT A DELIVERY OF THE FUNDS TO RESPONDENT.

Bearing in mind that "no Federal land bank shall have power to loan on first mortgage except through national farm loan associations as provided in section seven and section eight of this Act, or through agents as provided in section fifteen" (Federal Farm Loan Act, Section 14, 12 U. S. C., Section 791) attention is directed to the part of the Act (Section 11, 12 U. S. C. Section 761) enumerating the powers of national farm loan associations, reading as follows:

> "Second. To receive from the Federal Land Bank of its district funds advanced by said land bank, and to deliver said funds to its shareholders on receipt of first mortgages qualified under Section 12 of this act." (Emphasis Ours.)

The respondent submits that under a proper construction the language above quoted means that the Federal land bank advances funds to a national farm loan association and that said association "**delivers said funds to its shareholders on receipt of first mortgages qualified under section 12 of this act.**" A complete and final delivery of the mortgage security was not contemplated until the funds were paid over to the shareholders, and it follows that there would be no liability on the part of the shareholder until the payment of the funds and the delivery of the mortgage. From the language used follows the irresistible conclusion that Congress did not mean for the shareholder of a national farm loan association to be liable until the transaction was completed, that is until the shareholder actually received the funds. Congress intended to help applicants for loans, and this thought, with justice and equity considered, leads also to the conclusion that Congress did not contemplate a liability on the part of an applicant for a loan until said applicant actually received the money.

The same conclusion is reached from the language used in section 7 of the act (12 U. S. C. Section 720), which is as follows:

> "Upon receipt of its charter such national farm loan association shall be authorized and empowered to receive from the Federal land bank of the district **sums to be loaned to its members** under the terms and conditions of this act." (Emphasis Ours.)

The practice is for the applicant to execute the mortgage and forward it for examination and approval, but the foregoing quotations from the act unmistakeably say that national farm loan associations are to deliver said funds on receipt of the mortgage. Fairly construed the language means that the mortgage is effective when the borrower receives the funds.

It is true that in defining the duties of the secretary-treasurer of a national farm loan association (Sec. 7, 12 U. S. C., Section 714) the Act says:

> "It shall be the duty of the secretary-treasurer of every national farm loan association to act as custodian of its funds and to deposit same in such bank as the board of directors may designate, to pay over to the borrowers the sums received for their account from the Federal land banks upon first mortgage as in this Act prescribed."

The respondent respectfully submits that the language used by Congress in defining the duties of secretary-treasurer of a national farm loan association does not modify the language used in Sections 7, 11 and 12 of the Act. (12 U. S. C., Sections 720, 761 and 772.)

When the appellant issued its check payable jointly to respondent and the secretary-treasurer of the Columbus National Farm Loan Association, it was intended by the parties that the funds should reach the duly designated depository of the Association, (Federal Land Bank of Omaha v. Omaha National Bank of Omaha, 118 Neb. 489, 225 N. W., 471). In this case it was held that the endorsements of the borrowers were not necessary as the funds reached the duly designated depository of the national farm loan association as intended by the parties to the transaction and as directed by the provisions of the Federal Farm Loan Act.

In the case of McFadden v. Bland, 147 S. C. 27, 144 S. E. 592; it was held that the endorsement of the applicant payee while necessary was a mere formality.

The appellant says in its brief (page 18) that under the terms of the Act it is not mandatory that the funds be transmitted through national farm loan associations. The question is not considered material by the appellant, nor does the re-

spondent consider it material. If the appellant is correct that it had an election, it elected to transmit the funds through the association. Under every view, the funds are exactly where all parties contemplated they should be, and where Congress directed. The act of Mrs. Gaines in authorizing the endorsement of the check on her behalf did not have any bearing as the funds reached the place intended by all parties.

The respondent therefore respectfully submits that under a proper construction of the Federal Farm Loan Act, Congress intended Federal land banks to advance funds to national farm loan associations and that the associations were to deliver such funds to its shareholders on receipt of first mortgages, and that in the instant case, until the association delivered the funds to respondent, she should not be liable.

III. THE NATIONAL FARM LOAN ASSOCIATION WAS NOT THE AGENT OF RESPONDENT FOR THE PURPOSE OF RECEIVING THE FUNDS IN QUESTION, BUT WAS A PUBLIC AGENT.

The appellant contends that the national farm loan association is not the bank's agent. With equal force the respondent contends that the national farm loan association is not the agent of the borrower for the purpose of receiving funds to make a loan to one of its shareholders. The respondent relies upon the provisions of the Federal Farm Loan Act above discussed (12 U. S. Code, Sections 720, 761, and 772) and also on the cases of Bjorkstam v. Federal Land Bank, 138 Wash. 456, 244 Pac. 981, and Federal Land Bank of Columbia v. Shingler, et. al., 174 Ga. 352, 162 S. E. 815.

In the Washington case cited, the Court says:

"Under Federal Farm Loan Act secretary-treasurer

> of local farm loan associations is not the agent of the Federal Land Bank making loan, but is public agent whose authority parties dealing with him in that capacity were bound to know."

In the case of Holvick v. Black, 57 N. D. 270, 221 N. W. 71, the Supreme Court of North Dakota quotes with approval the foregoing part of the opinion in the Bjorkstam case and continues:

> "There is no doubt but what this is correct as a general statement. Of course this does not preclude the Federal Land Bank making the secretary-treasurer of the local farm loan association its agent, if it sees fit, either directly or indirectly."

In applying for a loan respondent was acting in accordance with the provisions of the Federal Farm Loan Act. In Sec. 14, 12 U. S. C., Sec. 791, we find "that no Federal land bank shall have power to loan on first mortgage except through national farm loan associations or through agents as provided in Section 15." The respondent could not obtain a loan from appellant except through the national farm loan association which served the territory in which respondent lived. Sections 14 and 15 of the Federal Farm Loan Act therefore provide for "intermediaries" through which loans can be made by Federal land banks to borrowers as loans cannot be made direct. The two intermediaries designated are national farm loan associations provided in Section 14 and the agents provided in Section 15 These "agents" can only be designated in territories where there are no associations, as associations have a preference, probably because of their cooperative features. There is no difference in the essential functions and duties of national farm loan associations and the agents designated in Section 15. In Section 15 the intermediaries are specifically designated as "agents" of the Federal land bank. The respondent can see no reason why national farm loan asso-

ciations are not likewise agents of the Federal land bank. The respondent thinks, however, that the better view is that the national farm loan associations being separate and distinct corporate entities created in accordance with the provisions of the Act with designated functions and duties, are "public agents."

The appellant says that it should not be at the mercy of an irresponsible intermediary. (Appellant's brief, pages 30 and 42). In Section 7 of the Federal Farm Loan Act, we find the following:

> "Upon receipt of such articles of association, with the accompanying affidavit and stock subscription, the directors of said Federal land bank shall send an appraiser to investigate the solvency and character of the applicants and the value of their lands, and shall then determine whether in their judgment a charter should be granted to such association. They shall forward such articles of association and accompanying affidavit to the Federal Farm Loan Board with their recommendation. **If such recommendation is unfavorable, the charter shall be refused.**" (Emphasis Ours.)

> "If such recommendation is favorable, the Federal Farm Loan Board shall thereupon grant a charter to the applicants therefor, designating the territory in which such association may make loans, and shall forward said charter to said applicants through said Federal land bank: **Provided**, That said Federal Farm Loan Bank may for good cause shown in any case refuse to grant a charter."

We therefore find that a national farm loan association cannot obtain a charter without the recommendation of the Federal land bank, and in Section 17 of the Act, it is provided "That the Federal Farm Loan Board shall have power to exercise general supervisory authority over the

Federal land banks, the national farm loan associations, and the joint stock land banks herein provided for."

IV. DISCUSSION OF BRIEF OF AMICUS CURIAE

The brief filed by the Amicus Curiae discusses and treats the question as if the bank had delivered the proceeds of this loan to the national farm loan association. The respondent thinks this is the correct view of the case. The Amicus reaches the conclusion that under a correct interpretation of the Act, the mortgage given to the Federal land bank becomes a valid and enforcible contract for which full consideration has passed when the Federal land bank has transmitted the loan funds to the association for the account of its member. With this conclusion respondent does not agree.

The respondent thinks the correct interpretation of the legislative intent should be that applicant for a loan should not become liable for the repayment of the funds until the actual or constructive receipt of the funds. The practice of the Federal land bank has uniformly been to send to the national farm loan association with the check a closed loan form with instructions for the closing of the loan. This procedure was followed in the instant case. The closed loan form is to be signed by the applicant, acknowledging the receipt of the funds.

The respondent respectfully submits that until the closed loan form is signed by the applicant, the transaction, under a correct interpretation of the Federal Farm Loan Act, is an incomplete transaction.

For example, assume that after funds had been transmitted to the association, a defect in the title should be discovered, it would undoubtedly be true that the Federal land bank could recall the funds from the association. The distinction which the respondent seeks to draw is that as long as the funds are subject to the control of the Federal land

bank, the applicant should not be responsible for the payment thereof. The applicant's responsibility should begin when the applicant is given the exclusive disposition of the funds. The funds must of course be disposed of by the applicant in accordance with the provisions of the Act, and when loans are obtained for the purpose of paying debts, on specific liens on property, they must be so applied, and are not subject to some extravagant purposes as suggested in the Amicus brief. To safeguard this Congress directed the supervision of the local association.

Using the illustration of a typical loan, the brief of the Amicus Curiae omits what the respondent thinks is an important statement, that is, the requirement that an applicant sign the bank's regular form of closed loan statement. The respondent concedes that after the signing of the closed loan statement the funds then in the hands of the secretary-treasurer of the association are held "pursuant to the borrower's authorization," as stated in the brief of the Amicus Curiae. The respondent does not think it is debatable that when the funds are held by the secretary-treasurer of the association "pursuant to borrower's authorization," that there is any doubt that the borrower would be liable for the repayment of the funds, because the borrower could then instruct the secretary-treasurer of the association to disburse the funds in accordance with the purposes for which the loan was approved.

In the instant case the secretary-treasurer of the association received the check and "telephoned to Mrs. Will Gaines, and told her that he had received the check, but that the proceeds of same would have to be collected and it would be several days before he would have the proceeds for distribution. He further stated that Mrs. Will Gaines' endorsement was required before the check could be forwarded for collection and that he could be authorized over the telephone to make this endorsement and thus save her

a trip to Columbus. P. S. Lewis further stated to Mrs. Gaines that the funds derived from such check would not be available for distribution until said funds were received in Columbus in the due course of collection, and that in the meantime the Federal Farm Loan Act directed the national farm loan association to receive such funds and retain the custody of the same until disbursed." (Record page 17.) The respondent thinks that these facts lead to the conclusion that the funds were not available for the purpose of closing the loan. Particular attention is here directed to the part of the Act which says, "Funds transmitted to farm loan associations by said Federal land banks to be loaned to its members shall be in current funds or farm loan bonds, at the option of the borrower." (U. S. C. Sec. 772). It does not appear that Mrs. Gaines elected to exercise her option or that the bank undertook to transmit farm bonds to close the instant loan and it must be taken that the parties intended that the funds to be transmitted to close the loan to Mrs. Gaines would be in "current funds." Mr. Lewis evidently did not think the check met the requirements because he told Mrs. Gaines that the proceeds of the check had to be collected and it would be several days before he would have the proceeds for disbusement; that the funds derived from said check would not be available for distribution untid said funds were received in Columbus. It is apparent that Mrs. Gaines wanted to get the funds to pay the obligations stated in her application as soon as the funds were available to her. She made an application for a loan, she furnished the abstract of the title to her property and executed the note and mortgage, all of which were details contemplated by the Act, and the check was endorsed by her authority as another step looking toward the completion of the transaction and the ultimate availability of the funds to her. All parties contemplated that the transaction would be completed and the closed loan form signed as soon as the funds were available for distribution, and this was only prevented be-

cause of the fact that "the proceeds of said check were in due course paid to the said Polk County Bank & Trust Company by its correspondents and almost simultaneously the Polk County Bank & Trust Company closed its doors." (Record page 17).

The brief being discussed says that under the decision rendered in this case, no mortgage securing a loan of the type described is a valid lien for the full face amount of the mortgage unless the last of the loan proceeds has been paid over by the secretary-treasurer of the association to the borrower, or upon his order, to his creditors, and that this rule, if sustained, would render ineligible as collateral security many of the mortgages which are now deposited with farm loan registrars and against which bonds have been issued. The respondent does not think that this is the effect of the decision, but on the other hand, the respondent respectfully submits that when the closed loan form has been signed by the applicant and forwarded by the association to the Federal land bank, the loan is then closed and the mortgage rendered eligible as collateral security for the bonds authorized by the Act. We repeat here what has been said earlier in this brief, that the proper interpretation of the Act is that the association is to receive from the Federal land bank of its district funds advanced by said land bank, and to deliver such funds to its shareholders on receipt of first mortgages, qualified under Section 12 of the Act. Practically applied, this language intends that when the funds advanced by the Federal land bank reach the association, the association is to deliver such funds to its shareholder on receipt of first mortgages, or hold the same for disbursement as otherwise provided in the Act. The closed loan form should be signed simultaneously with the delivery of the mortgage when the funds are available. As the funds in the instant case were not available for distribution due to the element of time between the actual receiving of the funds and the closing of the depository, there

was no actual or constructive delivery of the same to the respondent and she was not requested to sign the closed loan form. Having done everything directed by the Act, in strict accordance with its terms, the respondent respectfully submits that Congress did not contemplate that under the facts in the instant case, the loss should fall upon her.

V. CONCLUSION

In conclusion the respondent respectfully submits that the opinion handed down by the Supreme Court of North Carolina in the instant case is a correct construction of the part of the Federal Farm Loan Act necessary to a decision of this controversy. Any other construction would work a hardship upon the many farmers who seek aid under the provisions of the Act. In the instant case, if the Act is construed in accordance with the contention of appellant, it means that respondent will lose her home of 27 acres, by reason of being held liable for funds which she has not received, either actually or constructively. Respondent made her application for a loan in good faith, and did every thing directed by the Federal Farm Loan Act in an effort to obtain the loan applied for. Through no act of omission or commission is she responsible for the fact that she did not receive the funds. It is respectfully submitted, that under a proper construction of the legislative intent, she should not be liable under the facts in this case.

Respectfully submitted,

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